

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1965 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

=====

1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

-----  
BHARATBHAI AMBALAL MOSALPURIYA

Versus

COMMISSIONER OF POLICE

-----  
Appearance:

MR SATISH R PATEL for Petitioner

MR DP JOSHI AGP for Respondent No. 1, 2, 3

-----  
CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/11/1999

ORAL JUDGEMENT

#. Heard the learned advocate Shri Satish R. Patel for the petitioner and Shri D.P. Joshi, learned AGP for the respondents. The detention order dated 16.1.99 passed by respondent no.1 - Commissioner of Police, Ahmedabad city in exercise of power conferred under section 3 (1) of Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA" for short) is challenged in the present petition under Article 226 of the Constitution of India.

#. The grounds of detention supplied to the petitioner under section 9(1) of PASA, copy of which is produced at Annexure : C inter alia indicate that 8 criminal cases in respect to the offences made punishable under section 379 read with section 114 of I.P.C. are registered against the petitioner at different Police Stations of Ahmedabad. It is alleged against the petitioner that he is involved in theft of vehicles from different places. That all the 8 cases ranging from 1996 to 1999 are pending under police investigation. Furthermore, two witnesses vide their statements dated 22.12.98 and 28.12.98 have supplied information regarding anti-social activity of the petitioner on assurance of their anonymity. That in consideration of the above-stated material, the detaining authority has come to a conclusion that the petitioner is a "dangerous person" within the meaning of section 2 (c) of PASA. That resort to general provisions of law is insufficient to prevent the petitioner from continuing his anti-social activity and hence the impugned order is passed.

#. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the petitioner at bar that though the petitioner was in judicial custody as well as on remand on the date of the passing of the order, the detaining authority has passed the impugned order without considering the availability of less drastic remedy like cancellation of bail and as such, subjective satisfaction reached by the detaining authority having been vitiated, the detention order is rendered invalid.

#. In the matter of Zubedabibi vs. State of Gujarat reported vide 1995 (2) GLR 1134, Division Bench of this Court has expressed a view that non consideration of less drastic remedy like cancellation of bail available under section 437(5) of Cr.P.C. amounts to non application of mind vitiating the subjective satisfaction and thus renders the detention order invalid. That the said view has been approved and endorsed in the L.P.A. No. 1056 of 1999 decided on 15.9.99 by this Court (Coram: C.K.Thakkar & A.L.Dave, JJ).

#. In the instant case also, the penultimate para in the grounds of detention states that the detaining authority has considered the fact that the petitioner was in judicial custody and in one of the cases, he was on remand. However, the detaining authority has shown apprehension that on completion of remand period, the petitioner is likely to apply for bail and in all possibility, he is likely to be released and after

getting released on bail, he is likely to continue his anti-social activity and as such, the order of detention is necessary. It may be noted that such approach on the part of the detaining authority cannot be said to be appropriate approach as it is based on some apprehension. Furthermore, non consideration of less drastic remedy like cancellation of bail available under section 437(5) of Cr.P.C. has not been considered by the detaining authority before passing the impugned order and as such, the subjective satisfaction reached by the detaining authority has been vitiated rendering the impugned order invalid.

#. As the petition succeeds on the above-stated ground alone, it is not necessary to consider the other contentions raised by the petitioner.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 16.1.99 passed by respondent no.1 against the petitioner is hereby quashed and set aside. The petitioner-detenu-Bharatbhai Ambalal Mosalpuriya is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

\*\*\*\*\*

pirzada/-